Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

In the Matter of	)	
	)	
Review of the Prime Time Access Rule,	)	MM Docket No. 94-123
Section 73.658(k) of the Commission's Rules	)	

To: The Commission

REPLY COMMENTS OF FOX BROADCASTING COMPANY AND FOX TELEVISION STATIONS INC.

Fox Broadcasting Company ("FBC") and Fox Television Stations Inc. ("FTS" and, together with FBC, "Fox"), by their attorneys, hereby submit their Reply Comments in the above-captioned matter.

Consistent with its view that competition, rather than regulation, is the best servant of the public interest, Fox has no objection to repeal of the Prime Time Access Rule ("PTAR" or the "rule"). 1/ Fox makes the following brief points in order to correct the record regarding certain claims made by the three old networks.

There is no merit to the older networks' contention that Fox has received preferential treatment or competitive advantages as a result of PTAR. See, e.g., Comments of National Broadcasting Company, Inc. at 43 (contending that Fox has an "exemption" from the rule); Comments of CBS Inc. at 25 (the rule

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1/ Fox consistently has taken this position even with respect to regulations from which it may have benefited competitively. See, e.g., FBC's January 30, 1990 Petition for Resumption of Rulemaking and Request for Temporary Relief (urging repeal of the Financial Interest and Syndication Rules (the "fin/syn rules") for all networks).

reflects "blatant discrimination" in favor of Fox). To the extent the older networks contend that the network *definition* applicable to the rule is "preferential," they are simply wrong. The definition applies equally to all networks. 2/ Thus, the networks' "postulate" that FBC "has capped its programming hours . . . to avoid being classified as a network" 3/ is both speculative and irrelevant. Perhaps the three older networks have missed the fairly obvious fact that preserving the last hour of prime time for locally produced news is a competitively effective counter-programming strategy quite apart from any regulatory issues. In any event, *all* networks are free to move above or below the definitional line with identical regulatory consequences.

FBC has worked to build a fourth network in the face of numerous regulatory and marketplace structures that either explicitly or implicitly favor (or at least assume) a three-network world (e.g., VHF-UHF allotment policies, and cable and satellite copyright laws). Meanwhile, Fox is *fully subject* to numerous FCC "network" regulatory provisions relating to a wide range of operating requirements and prohibitions. If anything, it is the older networks, rather than FBC, that continue to enjoy numerous regulatory preferences.

2/ The definition effectively limits the applicability of PTAR and the remaining fin/syn restrictions to broadcast networks that provide more than 15 weekly hours of prime-time programming to their affiliates. See 47 C.F.R. § 73.662(f).

3/ Economists Incorporated, "An Economic Analysis of the Prime Time Access Rule," March 7, 1995 at 43 ("EI Comments"). This economic study was jointly commissioned by the three older networks. See Comments of Capital Cities/ABC, Inc. at 1.

Fox enjoys only one waiver from the FCC rules, allowing a corporate affiliate of FTS to publish The New York Post while FTS continues to operate WNYW(TV) in New York. *By contrast, the three older networks all have enjoyed, and continue to benefit from, numerous waivers of FCC rules.* Capital Cities/ABC, for example, enjoys several permanent waivers of the one-to-a-market rule. These waivers allow ABC to maintain in four of the five largest DMA markets lucrative AM-FM-TV combinations, previously forbidden altogether and now allowed only upon special showings. Capital Cities was permitted to retain these grandfathered combinations following its acquisition of ABC, even though the rule prohibited the intact sale of such combinations. ABC also enjoys a waiver of the television duopoly rule in order to own VHF stations in both New York and Philadelphia.

Similarly, CBS enjoys permanent one-to-a-market waivers in New York, Los Angeles, Chicago, Philadelphia and Minneapolis. CBS also owns a grandfathered New York/Philadelphia VHF television station combination prohibited by the television duopoly rule. And upon its acquisition of RCA in 1986, General Electric was granted temporary (18-month) waivers of the one-to-a-market rule in order to permit the orderly split-up of RCA's grandfathered AM-FM-TV combinations in New York, Chicago and Washington, D.C.

Ironically, in accusing Fox of benefiting from special regulatory treatment, the older networks seem to forget that it is precisely because of Fox' principled advocacy that they themselves also have been freed from most of the constraints of the fin/syn rules, which are scheduled to sunset entirely this year. In

1990, then sitting FCC Commissioners urged Fox to seek only a narrow waiver of fin/syn for the exclusive benefit of FBC while leaving the rules undisturbed for the three old networks. Instead, Fox sought a broad rulemaking aimed at repeal of fin/syn for *all* networks -- a regulatory initiative that the old networks were unable to launch for themselves because of long-standing commitments to key Congressional leaders.

There also is no merit to the networks' position that FBC's *affiliates* enjoy special advantages under PTAR. See, e.g., EI Comments at 46-47. Even if FBC's hours of weekly prime-time programming were to exceed PTAR's definitional threshold, its top-50 market O&Os and affiliates still would be in compliance with the rule because FBC sets aside one prime-time hour that is used by most stations to air first run syndication or local news programming. FBC and its affiliates and FTS recognize that locally-produced news programming is a successful counter-programming strategy, a valuable public service and a significant profit center. ABC, CBS and NBC could easily satisfy the requirements of PTAR, while providing four hours per night of prime-time programming, by scheduling an hour per day of prime-time public affairs, children's or documentary programming. See 47 C.F.R. § 73.658(k)(1). Just as all networks are equally free to choose *how much* programming to provide to their affiliates during prime time, they also are free to choose *what kind*.

Finally, while it may be true that "total payments to program producers would increase in the absence of PTAR," EI Comments at 46 n.88, it also

is true that any windfall for producers that may have resulted from the increased value of their programming broadcast on FBC accrues not to FBC, but to the entities and individuals who have ownership interests in the pertinent programs.

As stated above and previously, Fox has no objection to repeal of PTAR for all networks. In fact, Fox would have been willing to participate in a joint filing with the three old networks focused on the objective facts of this debate. It is regrettable that the old networks chose instead to exclude Fox from their joint effort and to fall back on their tired and inaccurate arguments about "Fox favoritism."

No one ever claimed that the emergence of new competition in network television would be good for the old oligopolists. And Fox favors broad deregulation

of *all* networks. But Commission action on PTAR, fin/syn and all other rules must be based on facts, rather than competitors' inaccurate allegations. Accordingly, Fox has submitted these Reply Comments in the interest of a complete and accurate factual record.

Respectfully submitted,

FOX BROADCASTING COMPANY
FOX TELEVISION STATIONS INC.

By _____

William S. Reyner, Jr.
Mace J. Rosenstein

HOGAN & HARTSON L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004
202/637-5600

Their Attorneys

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